

REMARKS

Claims 1, 7-14, 20-25, 31-41, 43 and 48-51 are pending in the application with claims 11-14, 20-25, 31-33, 37-41, 43, 50 and 51 withdrawn from consideration as being drawn to non-elected inventions.

Double Patenting

Claims 1, 7-10, 34-36, and 48-49 are rejected on grounds of nonstatutory obviousness-type double patenting over claims 1-4 of U.S. Patent No. 7,122,620.

The rejection of claims 1, 7-10, 34-36 and 48-49 is maintained. According to the Office Action, the use of liposomes for increased cellular uptake of other compounds is a known result of the use of liposomes and that the use of liposomes to carry other active agents in combination with peptides has been well known in the art.

Applicants respectfully traverse. As was discussed in Applicants' previous response, it is known that liposomes can be used to carry other active ingredients. However, it is completely irrelevant to the haptotactic peptide-liposomal composition of the present invention. The present invention shows that, surprisingly, the presence of haptotactic-peptides, particularly the peptide consisting of SEQ ID NO:1 modifies the liposomes activity to significantly enhance the composition uptake by different cell types. As described in the instant specification (Example 4, paragraphs [0152]-[0154]), the uptake of either the free haptotactic peptide or the free liposomes into cells was significantly lower compared to the uptake of the haptide-liposomal composition of the invention. As further described in the instant specification, the haptotactic peptide-liposomal composition of the present invention form a unique structure, wherein the typical aggregated appearance of the haptotactic peptide disappear when the composition is formed (Example 3 of the instant specification).

Claims 1-4 of U.S. Patent No. 7,122,620 (hereinafter "the '620 Patent") are directed to a haptopeptide peptide or composition comprising a peptide identical to that of SEQ ID NO:1 of the instant Application. The '620 patent, however, does not teach or suggest the combination of a haptopeptide of SEQ ID NO. 1 with a liposome as a delivery vehicle for the peptide.

Although the use of liposomes to carry other active ingredients is well known in the art, what was not known prior to the discovery by the inventors was the unexpected property of the haptopeptide-liposomal composition *to significantly enhance the composition's uptake by different cell types*. As described in the instant specification (Example 4, paragraphs [0152]-[0154]), the uptake of either the free haptotactic peptide or the free liposomes into cells was significantly lower than the uptake of the haptide-liposomal composition of the invention. This was empirically determined and could not have been predicted.

The inquiry for non-statutory obviousness-type double patenting is similar to that for obviousness under 35 U.S.C. 103. Under **KSR**, the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. **KSR International Co. v. Teleflex, Inc.**, 550 U.S. 398. Such is not the case here. Rather, as discussed above, the instantly claimed combination is more than the predictable use of prior art elements according to their established functions. Thus, Applicants respectfully submit that in view of the teachings of the '620 patent, the claimed peptide/liposome combination is not an obvious variation of the earlier claimed composition and it would not have been obvious to the skilled artisan to make the claimed combination since this new composition is unique in its structure and function, and possesses unexpected properties. Accordingly, the haptotactic peptide-liposomal compositions of the present invention would not have been obvious in view of the '620 Patent.

Reconsideration and withdrawal of the rejection is respectfully requested.

With respect to the provisional rejections of the claims of the present application on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of copending applications US20070009571, and US20070066535, Applicants respectfully submit that Applicant will address the double patenting rejection at such time that a claim of either of those applications is allowed so that the rejection is no longer provisional.

In view of the forgoing amendments and arguments, the claims are believed in condition for allowance and such action is respectfully requested. Additionally rejoinder of the method claims is requested. The Examiner is invited to contact Applicants' undersigned representative with any questions that arise in connection with the present application.

Respectfully submitted,

Dated: November 2, 2009

A handwritten signature in cursive script, reading "Kathy Smith Dias", written over a horizontal line.

Kathy Smith Dias, Reg. No.: 41,707
Attorney for Applicants
Heslin Rothenberg Farley & Mesiti P.C.
Telephone: (518) 452-5600
Facsimile: (518) 452-5579
Customer Number 23405